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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

ELH LLC, an Oregon limited liability company; OREGON HEREFORD RANCH LLC, an Oregon limited liability company; PAUL GELISSEN; MAURICE and LUCY ZIEMER; FRANK MUELLER; CRAIG and CYNTHIA PARKS and RICHARD and KRISTINE CARPENTER,

Case No.: 2:16-cv-01318-SU

**DEFENDANT'S MOTION AND
MEMORANDUM TO STAY
DISCOVERY**
REQUEST FOR ORAL ARGUMENT

Plaintiffs,

v.

WESTLAND IRRIGATION DISTRICT, an
irrigation district organized under the laws
of the State of Oregon,

Defendant.

LR 7-1 CERTIFICATION

Pursuant to LR 7-1(a)(1)(A) and Fed. R. of Civ. P. 26(c)(1), counsel for Defendant Westland Irrigation District (“Westland”) states that they conferred in good faith with counsel for Plaintiffs ELH LLC et al. (“Plaintiffs”) via telephone on August 16, 2016, regarding each basis for this motion, but that the parties were unable to resolve their dispute.

MOTION

Pursuant to Fed. R. Civ. P. 26(c), Westland moves for a stay of all discovery providing that Westland need not respond to Plaintiffs’ discovery requests, including Plaintiffs’ First Request for Production of Documents, served on August 15, 2016, until the Court rules on Westland’s pending Motion to Dismiss (Dkt. 9). In support of this Motion, Westland relies upon the accompanying memorandum, the Declaration of Nicole Hancock (“Hancock Decl.”) filed herewith, and the pleadings and papers on file.

MEMORANDUM IN SUPPORT

A. Procedural And Factual Summary.

Westland is an irrigation district, and therefore an Oregon municipal corporation, responsible for the operations and management of the district’s water delivery system and the delivery of water to district water users. (Complaint ¶¶ 3, 15, Ex. C at 1, D at 1.) Plaintiffs filed their Complaint (Dkt. 1) against Westland on June 28, 2016. Plaintiffs allege that Westland has

been engaging in the unconstitutional taking of private property for public use and that Westland's management of the district has been tortious. (Complaint ¶¶ 41-65.)

Westland moved to dismiss Plaintiffs' Complaint in its entirety based on lack of subject matter jurisdiction and failure to state a claim upon which relief could be granted. (Mot. to Dismiss at 2.) Westland has asserted that Plaintiffs have failed to exhaust their state remedies, and therefore the Court does not have subject matter jurisdiction over Plaintiffs' federal takings claim. (*Id.* at 4-8.) Plaintiffs' only other federal claim, seeking declaratory relief, is without basis in federal law and therefore confers no federal subject matter jurisdiction. (*Id.* at 8-11.) With dismissal of the federal claims, the Court cannot exercise supplemental jurisdiction over Plaintiffs' Oregon takings claim and tort claims. (*Id.* at 11-12.) However, even if the Court finds it has subject matter jurisdiction over Plaintiffs' state law claims, Plaintiffs have failed to state a claim upon which relief can be granted because Westland is immune from liability. (*Id.* at 13-17.)

On August 15, 2016, Plaintiffs served Plaintiffs' First Request for Production of Documents on Westland. (Hancock Decl. Ex. A.) Plaintiffs seek documents relating to Westland's management of the irrigation district from January 1, 1975, to present. (Hancock Decl. Ex. A at 3-6.) The discovery would require Westland Irrigation District to incur thousands of dollars in costs and expenses, and spend hundreds of hours to collect and process all of the documents responsive to the incredibly broad discovery requests. Due to the pending Motion to Dismiss on jurisdictional and immunity grounds, discovery in this matter should be stayed pending the Court's ruling.

B. A Stay Of Discovery Is Proper While Defendant's Motion To Dismiss Is Pending.

The Federal Rules of Civil Procedure “secure the just, speedy, and inexpensive determination” of cases. Fed. R. Civ. P. 1. Rule 1 guides the Court’s broad discretionary power to control discovery. *See Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In pending matters, the Court may make any order which justice requires to protect a party “from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). This power includes a stay of discovery when a potentially dispositive motion is pending. *See Voth v. Premo*, No. 6:14-CV-00128-KI, 2014 WL 1767095, at *2 (D. Or. May 5, 2014) (granting motion to stay discovery pending decision on dispositive motion); *Brown v. Or. Dep’t of Corr.*, No. 10-03-BR, 2011 WL 134941, at *1 (D. Or. Jan. 11, 2011) (district court enjoys “wide discretion” in controlling the scope and extent of discovery, including the discretion to stay discovery pending determination on summary judgment).

Exercise of this discretion is particularly appropriate when the requested discovery would not affect the pending dispositive motion. *Carroll v. United States*, 116 F.3d 1485 (table), 1997 WL 341868, at *1 (9th Cir. 1997) (unpublished opinion) (stay of discovery pending resolution of issue appropriate where discovery would not affect the court’s decision on that issue); *see also City of Seattle*, 863 F.2d at 685 (no abuse of discretion in staying discovery when discovery would not affect pending decision). A stay is especially proper when issues of immunity are raised. *See City of Seattle*, 863 F.2d at 685 (it is not an abuse of that discretion to stay discovery until the question of a defendant’s immunity can be resolved on summary judgment); *see Twin City Fire Ins. Co. v. Emp’rs Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989) (A pending motion to dismiss is not necessarily “a situation that in and of itself would warrant a stay of

discovery. Common examples of such situations, however, occur when jurisdiction, venue, or immunity are preliminary issues.”).

Here, Westland’s pending motion is a Motion to Dismiss pursuant to Rule 12(b)(1) and 12(b)(6). (Mot. to Dismiss at 4-17.) This is a dispositive motion that could lead to dismissal of this entire case on the pleadings and could negate the ultimate need to conduct discovery in federal court. One issue is the Court’s subject matter jurisdiction over Plaintiffs’ claims; the other is Westland’s discretionary immunity pursuant to the Oregon Tort Claims Act, ORS 30.265(6)(c). (*Id.* at 13-17.) Plaintiffs seek discovery on issues directly related to Westland’s management of the irrigation district, conduct that Westland asserts falls within the immunity provided for public entities making discretionary policy decisions. (*Id.* at 4-17; Hancock Decl. Ex. A at 3-6.) Even if there are claims that could be refiled in State court, it will likely alter the scope and substance of the discovery. Due to the nature of the pending Motion to Dismiss, this is a situation warranting a stay of discovery.

Further, the stay of the requested discovery will also not affect the decision on the Motion to Dismiss because Westland moves to dismiss based on the face of the Complaint. No discovery is required to enable a decision on the pending motion or for Plaintiffs to oppose Westland’s motion. In the event the Court grants the Motion to Dismiss, both parties will save resources in not needing to respond and manage premature and unnecessary discovery requests. If the Motion to Dismiss is denied, Plaintiffs will have suffered no prejudice and will have a full and fair opportunity to engage in discovery. Because staying discovery will further the goal of efficiency for the Court and keep with the goal of securing an inexpensive determination of the case, a stay is proper.

C. Conclusion.

For the reasons set forth above, Defendant respectfully requests that the Court stay all discovery pending the Court's ruling on Defendant's Motion to Dismiss.

CERTIFICATE OF COMPLIANCE

This brief complies with the applicable page and word-count limitation under LR 26-3(b) and LR 7-2(b), because it does not exceed 10 pages and it contains 1,140 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

DATED: August 19, 2016.

STOEL RIVES LLP

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2016, I served a copy of the foregoing
**DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO STAY
DISCOVERY** on CM/ECF Registered Participants as reflected on the Notice of Electronic
Filing as follows:

Michael E. Haglund – haglund@hk-lwa.com

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Attorneys for Plaintiffs

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-
CM/ECF Registered Participants on the attached list via first class mail with postage prepaid:

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/s/ Nicole C. Hancock

Nicole C. Hancock

David E. Filippi